

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)
79377

First Named Inventor: RUSSELL REED

Art Unit: 1743

Application Number: 10/036,882

Examiner: CROSS, LATOYA I.

Filed: 01/02/2004

Title: FIRE SUPPRESSING GAS GENERATOR COMPOSITION

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☐ Small entity - fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.

☒ Other than small entity - fee \$ 110.00 (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of
Amendment Under 37 CFR 1.111 (identify the type of reply):

☐ has been filed previously on _____.

☒ is enclosed herewith.

07/19/2004 MBIZUNES 00000016 500931 10036882

B. The issue fee of \$ _____

01 FC:1452

110.00 DA

☐ has been filed previously on _____.

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



DAC IFW

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

07/12/2004
Date


Signature

(760)939-4177
Telephone Number

CHARLENE A. HALEY
Typed or printed name

52983
Registration Number, if applicable

NAWCWD CODE K00000D
Address
1 ADMINISTRATION CIRCLE STOP 1009
CHINA LAKE, CA 93555-6100
Address

- Enclosure ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unavoidable delay
- ☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

07/12/2004
Date


Signature

VAL HALL, LEGAL ASSISTANT

Typed or printed name of person signing certificate

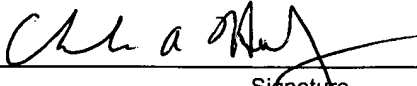


**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

07/12/2004

Date



Signature

52983

Registration Number, if applicable

CHARLENE A. HALEY

Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

Petition for Reviving an Unavoidably Abandoned Application
Under 37 CFR 1.137(a) is attached. (6 pages)

(Please attach additional sheets if additional space is needed.)



Navy Case No. 79377
Application Serial No. 10/036,882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Reed, et al
Examiner : Cross, Latoya I.
Art Unit : 5976
Docket No. : 79377
Serial No. : 10/036,882
Filed : 01/02/2002
For : FIRE SUPPRESSING GAS GENERATOR COMPOSITION

Assistant Commissioner of Patents and Trademarks
Washington, DC 20231

PETITION FOR REVIVING AN UNAVOIDABLY ABANDONED APPLICATION
UNDER 37 CFR § 1.137(a)

Sir,

This petition is in response to a Notice of Abandonment mailed June 29, 2004. The Applicants set forth the basis for the Petition to Revive an Application Unavoidably Abandoned. This Petition is submitted with the response to the above-identified office action.

STATEMENT OF FACTS

The Applicants received an office action (first office action on the merits) dated December 19, 2003, which was indicated as being a non-final office action. Applicants did not prepare a response to this office action. On June 28th, 2004, Examiner Cross called to notify Applicants that the above-identified patent application had become abandoned from failure to respond to Office Action dated December 19, 2003.

Immediately after the telephone conversation with the Examiner on June 28th, 2004, I investigated the matter. I unexpectedly discovered that the case file was assigned to a patent attorney that had left our government office over 2 years ago. When their case files were reassigned to a new Attorney, the docketing system failed to identify this case file as being assigned to this Attorney, and was therefore, not reassigned to a new attorney for its review. A copy of the parent application is typically placed in all related cases. In this isolated case, the abandoned parent of the above-identified patent application was placed in the same file folder and outside of the folder was inadvertently improperly marked abandoned. Later, when the Office Action dated December 19, 2003 was received and placed in the file by our docketing staff, the present Patent Attorneys were not told of this Office Action because the docketing staff believed that the file was correctly marked as abandoned.

On July 1, 2004, the Applicants received a Notice of abandonment on the above-identified patent application. The Applicants filed this petition promptly after it received the Notice of Abandonment on July 1, 2004.

I. PETITION FOR REVIVING AN UNAVOIDABLY ABANDONED APPLICATION UNDER 37 CFR § 1.137(a)

Due to the events that have occurred as outlined above, the Applicants respectfully petition the U.S. Patent and Trademark Office to revive the unavoidably abandoned patent application **UNDER 37 CFR § 1.137(a)**.

The Applicants Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 C.F.R. § 1.137(a).

(a) If the delay in reply by Applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent.

Grantable petition pursuant to this paragraph must be accompanied by the following items: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required pursuant to this paragraph (d) of this section if the utility application was filed before June 8, 1995 or if the filing of the petition to revive the abandoned application was not filed promptly after notification of the abandonment.

Decisions on reviving abandoned applications on the basis of unavoidable delay have adopted the reasonable prudent person standard in determining if the delay was unavoidable (MPEP 711.03(c)(C)(2)):

The word “unavoidable” ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

Furthermore, “unavoidable” means that something occurred beyond your control. That is, the inventor or legal representative and those under your control are expected to exercise the degree of prudence a reasonable person would exercise in relation to their most important business. If despite this prudence something unexpected goes wrong to cause an application to become abandoned, then that abandonment is unavoidable.

(1) A copy of the response is attached to the office action dated December 19, 2003.

(2) The Petition is accompanied by a petition fee of \$110.00 (large entity) as set forth in 37 C.F.R. 1.17(l) which is requested to be taken from the designated deposit account.

(3) Where the abandonment was an unavoidable delay, the petition requires a showing of facts demonstrating that the abandonment indeed was unavoidable. Evidence must demonstrate that abandonment was unavoidable throughout the entire delay in filing the required reply from the due date of the reply until the filing of grantable petition.

SHOWING OF FACTS FOR UNAVOIDABLE DELAY

The unavoidable events that are described in the Statement of Facts section were unavoidable and unexpected events that occurred which was beyond our control. In addition, there is in place a business routine for docketing such correspondence that is reasonably relied upon to avoid errors in its performance and the employees were sufficiently trained (18 years of experience) with regard to this function and routine (utilization of the docketing software program and recordation of documentation received from the USPTO) for its performance that reliance upon such employee represented the exercise of due care. If it were not for the failure of the docketing software program, a new attorney would have been assigned the case and would have discovered the improperly marked file and a timely response to the Office Action dated December 19, 2003, would have been filed with the USPTO.

(4) No terminal disclaimer is required since the filing date of the above patent application was after June 8, 1995 and the petition to revive the abandoned application was filed promptly.

SUBMISSION

1. A copy of the response to the Office Action dated December 19, 2003 filed with this Petition.
2. Showing of facts demonstrating that the abandonment indeed was unavoidable.

The Applicants Petition to Revive an Application Unavoidably Abandoned requires a showing of facts demonstrating that the abandonment indeed was unavoidable. The Applicants believe they have met this burden by showing that: if not for an avoidable failure of the docketing software program that this case file would have been reassigned to a new attorney and that attorney would have discovered the improper abandoned mark on the file, and as a result the highly trained docketing staff would have given the Office Action to the newly assigned attorney and the response to the Office Action would have been timely filed.

Therefore, Applicants respectfully request that the Petition to Revive the Unavoidable Abandonment of the Application be granted. However, in the event that abandonment is found not to have been unavoidable, please treat this Petition as one for acceptance of delayed filing of the Response to Office Action dated December 19, 2003 on the ground that the delay was unintentional under 37 CFR 1.137(b).

Only in the event that this Petition is considered to be unintentionally abandoned, the undersigned makes the statement that the delay in filing the Response was unintentional.

The Commissioner is authorized to charge any fees associated with filing of this Petition to Revive Abandoned Application under 37 C.F.R. § 1.137(a) or (b) to Deposit Account No. 50-0931.

Applicant invites the Examiner to call the undersigned if clarification is needed on any aspect of this response, or if the examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Navy Case No. 79377
Application Serial No. 10/036,882

Respectfully,

Navy Case No. 79377

NAWCWD

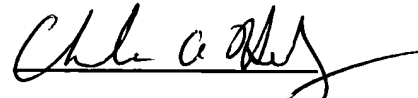
Office of Counsel, Code K00000D

1 Administration Circle, STOP 1009

China Lake, CA 93555-6100

Telephone: (760) 939-4177

Facsimile: (760) 939-0679

A handwritten signature in black ink, appearing to read 'Charlene A. Haley', with a long horizontal flourish extending to the right.

CHARLENE A. HALEY

Attorney for Applicants

Registration No. 52,983